



BRIEFING NOTE TO THE MINISTER OF INFRASTRUCTURE AND COMMUNITIES

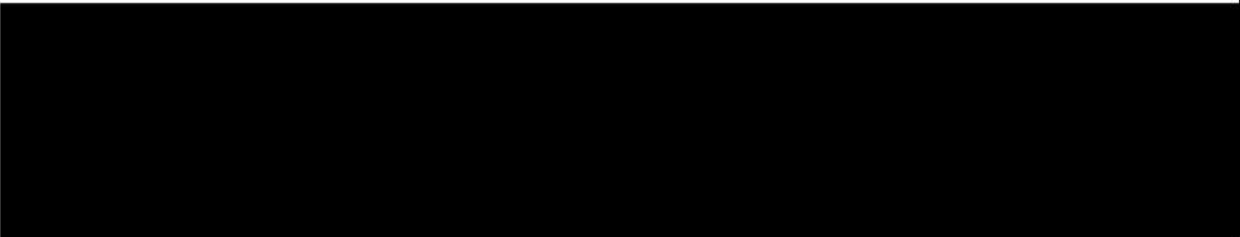
COVID-19 RELATED PROJECT COST-OVERRUNS AND SCHEDULE DELAYS

(For Information)

PURPOSE

To provide you with information on potential COVID-19 related cost-overruns and project delays on infrastructure construction projects.

SUMMARY

- The construction industry has proactively approached all levels of government to seek to address how COVID 19 related costs and delays will be handled. The extent of project delays and related cost-overruns are currently unknown as they depend on the length of delay stage and type of project. The construction contract provisions influence how costs and risks are shared in these situations (**Annex A**).
- Contracts between the public authority "owner" and the contracted party "construction company or consortium" will guide the process for identifying impacts and mitigation measures to make up time or reduce cost impacts, as well any additional payments.
- Where Infrastructure Canada (INFC) has direct oversight, such as the Samuel De Champlain Bridge and Gordie Howe International Bridge, the department is an "owner" and therefore exposed to specific costs and delays. The two major projects are fixed price, date-specific PPP projects, however both have contract provisions for dealing with Force Majeure events like Pandemics, and these discussions are underway.
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- Provinces, territories and municipalities are also engaged in processed to determine how best to address impacts of COVID-19 for projects they own and are contracting authority. What one government does may influence others. Although projects where INFC is a limited funding contributor, cost overruns other can eligible costs are not covered and there is no source of funds or mechanism to pay. Asks may begin from funding partners for GoC to cover some of these costs, and the department is monitoring the situation.

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CONTEXT AND KEY FACTS

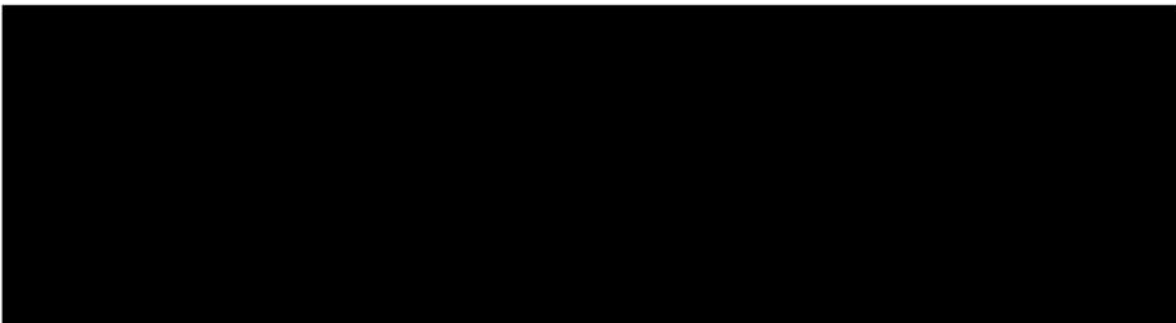
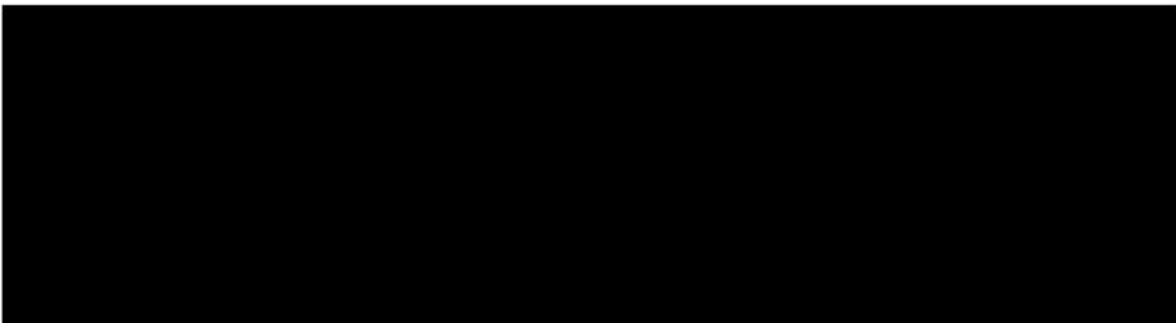
- This note compliments the Update on the Canadian Construction Industry briefing note (CIMS#55675) as there are some related issues.
- The extent of project delays and related costs overruns are currently unknown, as they depend on the length of delay and progress stage and type of project. The construction contract provisions influence how costs and risks are shared in these situations.
- Where Infrastructure Canada has direct oversight, such as the Samuel de Champlain Bridge and the Gordie Howe International Bridge, the department is an “owner” and therefore exposed to specific costs and delays. The two major projects are Public-Private Partnerships (PPP) and are fixed price and date-specific.
- Under other PPP projects, such as 25 P3 Canada Fund projects, INFC is not required to contribute beyond a percentage of eligible costs or up to a maximum approved amount. Many projects routinely face cost overruns and delays. These situations do not affect the federal contribution, other than if there remains room to absorb eligible costs within approved amounts. This is the same for majority of projects under all INFC programs.
- Multiple construction industry advocates have reported additional costs and decreased productivity as a result of COVID-19. Still, most infrastructure construction sites in Canada (excluding Quebec) have remained open whilst adopting COVID-19 health and safety precautionary measures.
- The Canadian Construction Association (CCA) requested the creation of a Federal Emergency COVID-19 Construction Cost Reimbursement Program (**Annex B**). Under this program, notwithstanding the provisions of each federal government contract, the Government of Canada would reimburse additional costs incurred by a contractor that is caused by the COVID-19 Pandemic.
- The CCA letter urges the GoC “to provide leadership to provincial, municipal and private sector project owners in creating cross-industry relief to the construction industry.” There is no national standard for treating Pandemic related cost-overruns or delays in construction contracts.

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INFCs responsibility on projects differs based on the Department's role: if the Department has direct oversight (owner) over the federal contract or if the Department is a funding partner.

Projects where INFC is owner:

- In the case of projects such as the Samuel De Champlain Bridge Corridor and the Gordie Howe International Bridge, COVID-19 cost-overruns or delays are managed and funded federally. Cost-overruns and schedule delays can be evidenced and dealt with fairly, transparently, and ensure value for money.
- INFC is monitoring COVID-19 impacts on these projects to ensure eventual claims can demonstrate a clear line of causation to be legitimate, owed, and minimize the cost to taxpayers. Actual costs are unknown until incurred, and Canada and the contractors agree on an impact assessment.

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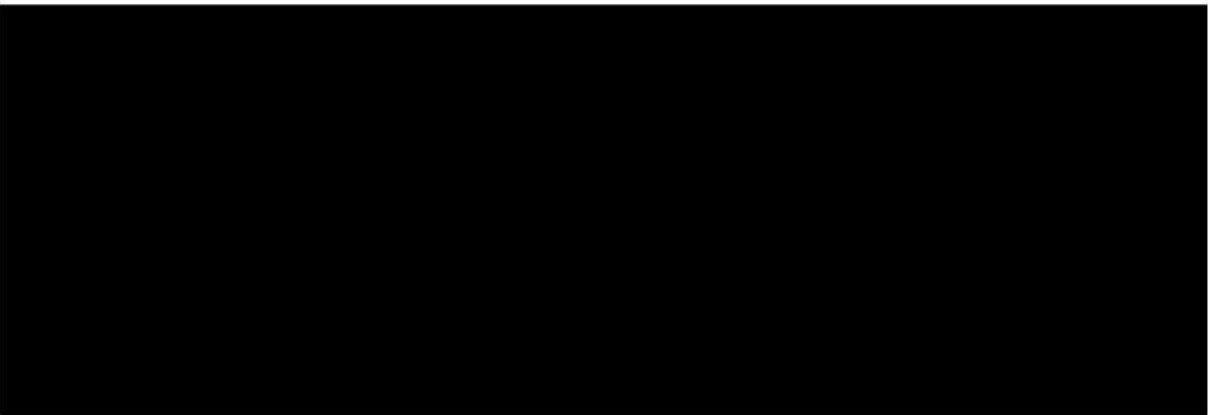
Projects where INFC is a funding partner

- These are projects supported through the Investing in Canada Plan or PPP Canada Fund. COVID-19 cost-overruns or delays are managed independently by Provinces, Territories, and Municipalities (PTM) with their contractors following specific contract provisions.

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- Contribution agreements are drafted to limit INFC's exposure to the risk of cost-overruns by setting a fixed maximum contribution. Sharing of risk between the contribution recipients and construction contractors varies based on the type of contract, contractual provisions, and jurisdictions.
- Construction contracts generally include Force Majeure considerations for events such as Pandemics, or related provisions to the same effect, typically providing schedule relief for delays resulting from unforeseeable natural disasters such as COVID-19.
- Presently, there is no mechanism for INFC to fund cost-overruns or enforce the interpretation of relief related contractual provisions signed under provincial jurisdiction. Furthermore, INFC has no visibility or levers to ensure COVID-19 related cost-overruns or schedule relief are dealt with consistently and provide value for money.
- There may be scope to include related costs however as eligible expenditures for projects that may be within their approved limits.
- At present PTMs that are owners of projects are best placed to assess their respective situations and will be facing same issues whether or not federal government is a funding partner. Many of these projects will be dealing with cost overruns and delays as a matter of course, and INFC has not be party to any of the decisions around procurement or contract management.

RECOMMENDATIONS/NEXT STEPS

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- INFC will continue to have open discussions with our Private Partners, and other government officials on COVID-19 related construction schedule and cost impacts.

Kelly Gillis
Deputy Minister
Infrastructure and Communities

Date

Attachments:

Annex A – Table Cost-Overruns

Annex B – CCA Letter to the PM COVID-19 Cost Relief

Annex A: Cost Overrun Table

	Projects (#)	Value (\$)	Federal Max Contribution (\$)	Federal Financial commitment	INFC relationship with Projects	Access to contract	Access to contract performance (cost-overrun)	Participation on Project Governance
Federal Projects (GHIB, Champlain)								
PPP Canada Fund Projects								
ICIP Projects in construction (Estimates)								
DMAF								

April 5, 2020

The Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington Street
Ottawa, ON K1A 0A2

Re: COVID-19

Dear Prime Minister Trudeau,

We know the Government of Canada understands that the impact of COVID-19 on construction contracts and contractors is unprecedented. This is an extraordinary situation and the construction industry is asking governments at all levels for extraordinary consideration to relieve some of these impacts on the industry and help ensure that the industry is there with capacity to build Canada into the future.

The federal government has hundreds of critical projects that are already in progress or need to be maintained. Many of these are essential to the well-being of our citizens, including defence, security, infrastructure and the administration of justice and government. The highest focus of the construction industry is on the health and safety of our workforce, their families, colleagues and communities. Provided sites remain compliant with the requirements and guidance of public health authorities we urge you to continue with these projects, as well as continue with the tendering and awarding process. Should this construction activity come to a halt, given the scale of employment of our sector and the impact on quality of life daily of Canadians, there would be an immediate impact on the social and economic development of the country.

In our letter to you on March 21, 2020 we asked specifically for Canada to make *“A clear statement, supported by future legislation, addressing how the Government of Canada will treat delays, project disruptions and other COVID-19 related costs under the provisions of federal contracts, as well as leadership in dialogue with provincial authorities on developing a consistent approach on this issue.”*

We acknowledge and appreciate the dialogue we have had with Public Services and Procurement Canada (PSPC) and Defence Construction Canada (DCC) on this and acknowledge the communication by DCC on the subject of reasonable schedule extensions. Unfortunately, this is not enough.

Construction companies urgently need both reasonable extensions of time and schedule relief for COVID-19 related project delays, and they need compensation for reasonable additional COVID-19 related costs including project staff and overhead.

It is not possible at this time to fully quantify the duration of the COVID-19 disruption or the resulting delay and cost impact. Therefore, on behalf of the industry and our members, CCA is asking for provisional relief to be granted to the industry. There will be a time to consider whether this first step is adequate or extends long enough, but at this point in time CCA is asking the Government of Canada and its procurement agencies, urgently to:

1. Confirm that under federal contracts, notwithstanding the provisions on a contract, the Government of Canada will agree to give reasonable schedule extensions and relief from schedule and milestone delays caused by the COVID-19 pandemic;
2. Create an *Emergency COVID-19 Construction Cost Reimbursement Program* under which, on each federal contract and notwithstanding the provisions of a contract, the Government of Canada will reimburse additional costs incurred by a contractor that are caused by the COVID-19 pandemic, where these costs are incurred after March 15, 2020. Eligible costs would not be limited to but would, as examples, include the following categories:
 - a. Additional health & safety costs;
 - b. Site security and maintenance costs;
 - c. General conditions;
 - d. Extra insurance and bonding costs;
 - e. Demobilization costs for the prime contractor, including demobilization costs paid by a prime contractor to its subcontractors, suppliers and manufacturers;
 - f. Costs incurred to maintain reasonable delivery dates for project materials and equipment, including cost premium for alternatively sourced material due to supply chain interruptions;
 - g. Additional cost to make up lost and reduced productivity related, for example, to time devoted to cleaning and protective activities, compliance activities and briefings, and reduced labour productivity due to distancing and related measures;
 - h. Extended project and site rentals;
 - i. Project-related overhead costs;

- j. Reasonable remobilization costs; and
- k. Other reasonable COVID-19 related costs.

This would clearly require reasonable record keeping, documentation and a degree of good faith on the part of both industry and the Government of Canada. There would also be an expectation that each contractor should provide the Government of Canada with reasonably prompt notice that they are incurring COVID-19 related delay and additional costs and that they are asking for relief under this program. Also, it would need to be clear that reimbursement under this Emergency Program would be in addition to, and not diminish normal entitlements under the terms of any contract.

We understand the challenge to the Government of Canada in providing an open-ended program and, on a provisional basis, CCA would recommend that eligible costs be reimbursed up to 5% of the contract value as a starting point, subject to the program being adjusted as the duration and full impact of COVID-19 become more clear over time.

Again, we acknowledge and appreciate the speed at which the Government of Canada is trying to implement programs that can ease the impact of COVID-19 on all sectors of the Canadian economy. In providing you with this specific proposal we are hoping to facilitate these efforts.

We urge the Government of Canada to take these steps immediately, both to provide relief for contractors on Federal contracts, but also, and just as importantly, to provide leadership to provincial, municipal and private sector project owners in creating cross-industry relief to the construction industry that will help ensure that the construction industry continues to be able to provide capacity to build the infrastructure that keeps Canada healthy.

Mary Van Buren
President

C.C.

Hon. Chrystia Freeland, Deputy Prime Minister and Minister of Intergovernmental Affairs
Hon. Anita Anand, Minister, Public Services and Procurement Canada
Hon. Bill Morneau, Minister of Finance
Hon. Catherine McKenna, Minister of Infrastructure and Communities
Hon. Jean-Yves Duclos, President of the Treasury Board